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its demonstration in accordance with paragraph (b)(5) of this section.

(8) Upon request by the recipient of the proposed prohibition order, the combined public comment periods provided for in this section may be reduced to a minimum of forty-five (45) days from the time of publication of the proposed order.

(9) OFE may terminate a prohibition order proceeding at any time prior to the date upon which a final order shall become effective. Should OFE terminate the proceeding, it will notify the proposed order recipient, and publish a notice in the FEDERAL REGISTER.

(c) *Decision to issue a final order.* (1) OFE will base its determination to issue an order on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with reliable, probative and substantial evidence.

(2) OFE shall include in the final order a written statement of the pertinent facts, a statement of the basis upon which the final order is issued, a recitation of the conclusions regarding the required findings and qualifications for exemptions. The final order shall state the effective date of the prohibition contained therein. If it is demonstrated that the facility would have been granted a temporary exemption, the effective date of the prohibition contained in the final order shall be delayed until such time as the temporary exemption would have terminated. If it is demonstrated that a facility will need a period of time to comply with the final order, the effective date of the prohibition contained in the final order may be delayed, in OFE's discretion, so as to allow an order recipient to comply with the final order.

(3) OFE will enclose with a copy of the final order, where appropriate, a schedule of steps that should be taken by a stated date (a compliance schedule) to ensure that the affected facility will be able to comply with the prohibitions stated in the order by the effective date of the prohibition contained in the final order. The compliance schedule may require the affected person to take steps with regard to a unit 60 days after service of the final order.

(4) A copy of the final order and a summary of the basis therefore will be

published in the FEDERAL REGISTER. The order will become effective 60 days after publication in the FEDERAL REGISTER.

(d) *Request for order.* (1) A proceeding for issuance of a prohibition order to a specific unit may be commenced by OFE, in its sole discretion, in response to a request for an order filed by the owner or operator of a facility.

(2) A petition requesting OFE to commence a prohibition order proceeding should include the following information for all units to be covered by the prohibition order:

(i) A statement of the reasons the owner or operator is seeking the issuance of a prohibition order; and

(ii) Sufficient information for OFE to make the findings required by section 301(b) of FUA.

(3) If OFE determines to accept the request, OFE shall publish a proposed order in the FEDERAL REGISTER together with a statement of the reasons for the order.

(Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*); Energy Supply and Environmental Coordination Act of 1974, Pub. L. 93-319, as amended by Pub. L. 94-163, Pub. L. 95-70, (15 U.S.C. 719 *et seq.*); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3269 (42 U.S.C. 8301 *et seq.*); Omnibus Budget Reconciliation Act of 1981, (Pub. L. 97-35); E.O. 12009, 42 FR 46267, Sept. 15, 1977)

[46 FR 59889, Dec. 7, 1981, as amended at 47 FR 17042, Apr. 21, 1982; 47 FR 50848, Nov. 10, 1982; 54 FR 52892, Dec. 22, 1989]

§ 501.52 Prohibitions by order—certifying powerplants.

(a) OFE may prohibit by order the use of petroleum or natural gas as a primary energy source or in amounts in excess of the minimum amount necessary to maintain reliability of operation consistent with maintaining reasonable fuel efficiency in an existing powerplant if the owner or operator of the powerplant certifies, and OFE concurs in such certification in accordance with the requirements of §§ 504.5, 504.6 and 504.8.

(b) *Notice of order and participation.* (1) OFE may hold a conference with the

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proposed order recipient, at the recipient's election, prior to issuing the proposed order. The conference may resolve any questions regarding the certification required by section 301 of the Act, as amended, and §§ 504.5, 504.6, and 504.8, and OFE's review and concurrence therein.

(2) Pursuant to section 701(b) of FUA, prior to the issuance of a final order to a certifying powerplant owner or operator, OFE must publish in the FEDERAL REGISTER, a proposed prohibition order stating the reasons for such order. OFE will review all of the information submitted by a proposed order recipient within 60 days after receipt by OFE. If the certification is complete, OFE will, within 30 days after the end of the 60 day review period, publish in the FEDERAL REGISTER a Notice of Acceptance of certification together with a proposed prohibition order stating therein the reasons for such order. This commences the prohibition order proceeding. If OFE does not believe it is able to concur in the certification, OFE shall notify the proposed order recipient and shall publish a Notice of Proposed Non-Concurrence in the FEDERAL REGISTER within 30 days after the end of the 60 day review period. If OFE finds that the certification with compliance schedule is incomplete, OFE will notify the proposed prohibition order recipient as to the deficiencies, and provide an additional period of 30 days for the certification to be amended and resubmitted. If a complete certification is not submitted within this period, the proceeding shall be terminated in accordance with § 501.52(b)(5). OFE will notify the proposed order recipient and other parties to the proceeding of the termination and publish a notice in the FEDERAL REGISTER. OFE, on its own motion, may extend any period of time by publishing a notice to that effect in the FEDERAL REGISTER.

(3) The publication of the Notice of Acceptance or Notice of Proposed Non-Concurrence commences a period of 45 days during which interested persons may submit written comments or request a public hearing. During this period, the recipient of the proposed order and any other interested person may submit any evidence that they

have available relating to the proposed order, the certification or the concurrence that OFE must make. A proposed order recipient may submit additional new evidence at any time prior to the close of the public comment period which follows the commencement of the proceeding or prior to the close of the record of any public hearing, whichever occurs later. A request for an extension of the 45 day period may be granted at OFE's discretion. In the case of a Notice of Acceptance, as set forth in § 504.9, no final prohibition order can be issued until any necessary environmental review pursuant to the National Environmental Policy Act of 1969, 42 U.S.C 4321 *et seq.* (NEPA) has been completed. Upon completion of the NEPA review and unless OFE determines on the basis of the record of the proceeding that the certification fails to meet the requirements of §§ 504.5, 504.6, and 504.8, OFE shall publish a final prohibition order, together with the information required by paragraph (c) of this section. In the case of a Notice of Proposed Non-Concurrence, at the end of the 45 day comment period, OFE will notify the proposed order recipient and parties to the proceeding and publish a final Notice of Non-Concurrence in the FEDERAL REGISTER, if OFE determines it cannot concur in the certification based upon additional information submitted during the proceeding. If, at the end of the 45 day period, OFE believes it can concur in the certification, OFE will notify the proposed order recipient and parties to the proceeding and publish a Notice of Acceptance followed by a new 45 day comment period.

(4) If a hearing has been requested, OFE shall provide interested persons with an opportunity to present oral data, views and arguments at a public hearing held in accordance with subpart C of this part. The hearing may consider, among other matters, the sufficiency of the certification of the owner or operator of the powerplant required by section 301 of FUA, as amended, and §§ 504.5, 504.6, and 504.8 of these regulations.

(5) OFE may terminate a prohibition order proceeding at any time prior to the date upon which a final prohibition order is issued whenever OFE believes,

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from any information contained in the record of the proceeding, that the certification does not meet the requirements of section 301 of the Act, as amended, or §§ 504.5, 504.6, and 504.8 of these regulations. If OFE terminates the proceeding or publishes a final Notice of Non-Concurrence, or the proposed order recipient fails to submit a complete certification, OFE will notify the proposed order recipient and other parties to the proceeding and publish a notice in the FEDERAL REGISTER. In such event, the proposed order recipient may submit a new certification under any provision of section 301 of the Act, as amended, at a later date. Specifically, a Notice of Non-Concurrence under either section 301(b) or 301(c) shall not affect a proposed order recipient's ability to make a certification under the other subsection.

(c) *Record and decision to issue a final order.* (1) OFE will base its determination to issue an order on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with reliable, probative and substantial evidence.

(2) OFE shall include in the final order a written statement of the basis upon which the final order is issued, and its concurrence in the required certification. A copy of the final order and a summary of the basis therefor will be published in the FEDERAL REGISTER. While the prohibition order is final for purposes of judicial review under section 702 of FUA, the prohibitions contained in the final order shall not become effective for purposes of amendment under section 301(d) of FUA, as amended, and § 501.52(d) of these regulations until the effective date of the prohibitions stated in the order, or, where the order is subject to one or more conditions subsequent listed in the prohibition order compliance schedule, until all its conditions are met.

(d) *Amendment to certifications under §§ 504.5 and 504.6.* The proposed prohibition order recipient may amend its compliance schedule under § 504.5(d), or its certification under section 301 of FUA, as amended, and §§ 504.5, 504.6 and 504.8 of these regulations in order to take into account changes in relevant facts and circumstances at any time

prior to the effective date of the prohibitions contained in the final prohibition order.

(e) *Rescission of prohibition orders.* The rescission or modification of final prohibition orders issued to existing electric powerplants will be governed by the procedure in § 501.101 of these regulations.

(Approved by the Office of Management and Budget under control number 1903-0077)

(Department of Energy Organization Act, Pub. L. 95-91, 42 U.S.C. 7101 *et seq.*; Energy Supply and Environmental Coordination Act of 1974, Pub. L. 93-319, as amended by Pub. L. 94-163, Pub. L. 95-70, and Pub. L. 95-620, 15 U.S.C. 719 *et seq.*; Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, as amended by Pub. L. 97-35, 42 U.S.C. 8301 *et seq.*; Omnibus Budget Reconciliation Act of 1981, (Pub. L. 97-35))

[47 FR 17042, Apr. 21, 1982]

§§ 501.53–501.56 [Reserved]

Subpart F—Exemptions and Certifications

§ 501.60 Purpose and scope.

(a) (1) If the owner or operator plans to construct a new baseload powerplant and the unit will not be in compliance with the prohibition contained in section 201(a) of FUA, this subpart establishes the procedures for filing a petition requesting a temporary or permanent exemption under, respectively, sections 211 and 212 of FUA.

(2) Self-certification alternative. If the owner or operator plans to construct a new baseload powerplant not in compliance with the prohibitions contained in section 201(a) of FUA, this subpart establishes the procedures for the filing of a self-certification under section 201(d) of FUA.

(3) If the petitioner owns, operates or controls a new powerplant, this subpart provides the procedures for filing a petition requesting extension of a temporary exemption granted under sections 211 or 311 of FUA.

(4) If the petitioner owns, operates or controls a new or existing powerplant or MFBI, this subpart provides the procedures for filing a petition requesting extension of a temporary exemption granted under section 211 or section 311 of FUA.